IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

FRANK BLAIR, an individual,	S	
Plaintiff,	§ §	
V.	Š	CIVIL ACTION NO. 06-651-MEF
AETNA LIFE INS COMPANY,	Š	
AMERICOLD LOGISTICS, LLC,	S	
DAWN SANFORD, et al.	S	
Defendants.	S	

PLAINTIFF'S MEMORANDUM BRIEF IN RESPONSE TO DEFENDANTS' AETNA LIFE INS. COMPANY, AMERICOLD LOGISTICS, LLC AND DAWN SANFORD'S MOTION TO DISMISS OR, IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

In compliance with this Court's Order of August 4, 2006, Plaintiff, Frank Blair offers this memorandum brief in opposition to Defendant, Aetna Life Ins. Company, Americold Logistics, LLC and Dawn Sanford's Motions to Dismiss or, in the Alternative, for Summary Judgment. For the reasons stated herein, plaintiff asks this Court to deny defendants' motions.

FACTS

- 1. On November 20, 2002, Blair purchased life insurance coverage in the amount of \$40,000 for Sandra Blair.
- 2. A deduction in the amount of \$2.77 was taken from Blair's paycheck each pay period for supplemental life insurance on Sandra Blair until July 11, 2004, approximately three weeks after Sandra Blair's death.
- 3. On June 16, 2004, Sandra Blair expired.
- 4. Thereafter, on July 27, 2004, defendant, Aetna Life Ins. Company informed Blair that no coverage existed. See correspondence attached hereto as Exhibit A.

PLAINTIFF'S COMPLAINT

On or about June 14, 2006, Blair commenced the present lawsuit by filing a complaint in the Circuit Court of Montgomery County, Alabama. Asserting diversity jurisdiction and ERISA claims, Defendants removed this matter to this Court.

Plaintiff's claims against defendants include fraud, breach of contract and negligence in collecting and processing Blair's premiums for life insurance.

ARGUMENT

Plaintiff is not required by the Federal Rules of Civil Procedure to set out in detail the facts upon which he bases his claim. All that is required is a short and plain statement of the claim showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2). The statement must be sufficient to afford the defendant fair notice of what the claim is and the grounds upon which it rests. Thus, the issue of a Fed.R.Civ.P. 12(b)(6) motion is not whether the plaintiff will ultimately prevail on his or her claims, but whether the allegations contained in the complaint would be sufficient to allow discovery as their proof. Whitney Info. Network, Inc. v. Xcentric Ventures, LLC, 2005 U.S.Dist.LEXIS 24920 (D.Fla., July 14, 2005 decided).

Defendants first contend that Blair's claims should be dismissed because the law is clear that in ERISA actions, you must exhaust available administrative remedies before suing in Federal Court. (Defendants' Brief P. 3) There is absolutely no evidence before this Court that Blair received a copy of an insurance policy from any source, including Aetna Life Ins. Company. In fact, the evidence implies and supports the contrary. Blair received a letter from Aetna dated July 27, 2004, that reads as follows:

Please accept our condolences at the recent death of your wife.

Unfortunately, we have researched our records and found that as of the date of Mrs. Blair's death you did not have dependent spouse coverage in force. Our records reflect that you had elected dependent child

coverage, but not spousal coverage. Therefore there is no life benefit payable for this claim.

Please contact your employer if you have any questions regarding this matter.

Plaintiff's Exhibit A.

A fair reading of this letter would indicate that Aetna never wrote a policy of insurance for Sandra Blair. Consequently, if no policy was ever taken out, Blair would not have received a copy of the insurance policy that would have alerted him of the necessity to pursue administrative remedies. It appears that the first time a policy was produced would have been after the filing of the lawsuit by Blair. A fair reading of the July 27th letter also supports that Blair was not advised of his need to pursue administrative remedies prior to filing a lawsuit. The question that begs to be answered is what administrative remedies are available against Aetna Life Ins. Company if, in fact, Aetna never placed in force a life insurance policy for Sandra Blair. An argument can certainly be made that the premiums taken from Blair's paycheck were never forwarded to Aetna Life Ins. Company.

Clearly, the July 27, 2004 letter did not adequately inform Blair of his rights and obligations. Law supports that the defendants cannot now contend that the claim fails because he did not exhaust administrative remedies. *See Syed v. Hercules, Inc.*, 214 F.3d 155, 162 (3rd Cir. 2000) wherein the Court cited *Counts v. American General Life & Accident Inc. Co.*, 111 F.3d 105, 108 (11th Cir. 1997) for the proposition that where a benefit termination letter does not comply with statutory and regulatory requirements, time limits for bringing administrative appeal are not enforced against claimant; thus the remedy for violation is to remand to plan administrator so claimant gets benefit of full and fair review.

Consequently, Blair's complaint should not be dismissed for failure to exhaust any alleged administrative remedy in light of the fact that there is no proof that he received a copy of any document alerting him of his administrative remedy duties nor did the termination letter alert him of any such duties. At the very least, Blair should be afforded his administrative appeal rights. Again, it

should be pointed out, what rights would be available if an insurance policy was never taken out because Aetna Life Ins. Company never received any premiums or notice of Blair's request for such a policy. Attached as Exhibit B are Blair's payroll stubs showing the deductions of premiums for life insurance policy at issue.

Defendants' next contend that the policy by its express terms, provides spousal life insurance only to a claimant's "legal spouse". (Defendants' Brief P. 4) This defense may be appropriate if a policy was written by Aetna Life Ins. Company. However, a fair reading of Aetna's termination letter to Blair would indicate that a policy of life insurance on Sandra Blair was never issued. Therefore, the claims remain as to why Frank Blair was paying insurance premiums for such a policy for many months when in fact the policy was never written.

CONCLUSION

Plaintiff respectfully prays that this Court deny Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment. The evidence indicates that Blair never received an insurance policy alerting him of his administrative duties nor did the July 27, 2004 termination letter alert him of his administrative duties. Additionally, a fair reading of the evidence would indicate that Blair paid life insurance premiums for Sandra Blair. These premiums were deducted from his paychecks. These deductions continued over many months. Blair had reason to believe that he had in effect a policy of life insurance for Sandra Blair. Apparently, the premiums deducted from his checks were (1) never forwarded to Aetna Life Ins. Company (2) Aetna Life Ins. Company denied the issuance of a policy but this denial was not provided to Blair (3) Aetna failed to convey its denial.

Respectfully submitted:

/S/ Ralph Bohanan, Jr.

RALPH BOHANAN, JR. Attorney for Plaintiff

Bar Number: ASB-3857-B41R

OF COUNSEL:

BOHANAN & KNIGHT, P.C. One Perimeter Park South Suite 318 North Birmingham, Alabama 35243 Telephone: (205) 977-2200 Facsimile: (205) 977-2555

ralphb@bohananknight.com

CERTIFICATE OF SERVICE

I do hereby certify that on the 21st day of August, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Amelia Driscoll at adriscoll@bradleyarant.com and James S. Christie, Jr. at jchristie@bradleyarant.com.

/S/ Ralph Bohanan, Jr. OF COUNSEL



PO Box 14547 Lexington, KY 40512-4547 Ellen M. Burris Client Services Aetna Life Insurance (860) 273-4639 Fax; (800) 803-5934

July 27, 2004

Frank Blair 26 Ellcott Circle Montgomery, AL 36118

Dear Mr. Dlair:

RE: Sandra M. Blair

Employer: Americold Logistics

Please accept our condolences at the recent death of your wife.

Unfortunately, we have researched our records and found that as of the date of Mrs. Blair's death you did not have dependent spouse coverage in force. Our records reflect that you had elected dependent child coverage, but not spousal coverage. Therefore there is no life benefit payable for this claim.

Please contact your employer if you have any questions regarding this matter.

Sincerely,

Ellen M. Burris

AMERICOLD LOGISTICS LLC 10 GLENLAKE PARKWAY SUITE 800 ATLANTA, GA 30328

Period Ending:

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Pay Date:

FRANK BLAIR 26 ELCAR CIRCLE MONTGOMERY, AL 36108

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AmeriCold Logistics, LLC 10 Glenlake Parkway Suite 800, South Tower Atlanta, GA 30328

Taxable Marital Status: M

Social Security Number: 421-80-3290 Exemptions/Allowances Add'l

Fed: 00 AL: 00

Period Ending: Check Date: Check Number: Batch Number:

Page 001 of 001 05/30/2004 06/04/2004 0000846846 00000000118

FRANK BLAIR 26 Elcar Circle Montgomery, AL 36108

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AmeriCold Logistics, LLC 10 Glenlake Parkway Suite 800, South Tower Atlanta, GA 30328

Taxable Marital Status: M

Social Security Number: 421-80-3290

Exemptions/Allowances Add'l

Fed: 00 AL: 00 Period Ending: Check Date; Check Number: Batch Number: Page 001 of 001 06/27/2004 07/02/2004 0000853431 00000000125

FRANK BLAIR

26 Elcar Circle Montgomery, AL

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AmeriCold Logistics, LLC 10 Gleniake Parkway Suite 800, South Tower Atlanta, GA 30328

Taxable Marital Status: M

Social Security Number: 421-80-3290

Exemptions/Allowances . Add'l

Fed: 00 AL: 00

Eled 08/21/2006 Page 4 of 6 Earnings Statement

Period Ending: Check Date: Check Number: Batch Number:

Page 001 of 001 07/11/2004 07/16/2004 0000856554 000000000129

FRANK BLAIR 26 Elcar Circle

36108 Montgomery, AL

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AmeriCold Logistics, LL_ 10 Glenlake Parkway Suite 800, South Towe Atlanta, GA 30328

Taxable Marital Status: M

Social Security Number: 421-80-3290

Exemptions/Allowances

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Vacation	0.0000	0.00	0.00	1142.56
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Fed MED/EE	13.69	212.19
Fed OASDI/EE	58.52	908.14
AL Withholdng	25.96	499.07
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Additional Deductions		
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Supplemental Life - Child	0.76	11.40
Supplemental AD&D - EE	1.11	9.99
401(k) Loan	49.82	797.14
Garn - Child	113.75	7.36.25
Other Deductions	0.00	1078.86
Total Deductions:	280.49	47 13.70
*Excluded from Taxable Wages		Service on Service (See Section 2)
Net Pay:	578.01	87.39.44

Earnings Statement

Period Ending: Check Date: Check Number:

Batch Number:

Page 001 of 001

07/25/2004 07/30/2004 0000859565 000000000132

FRANK BLAIR

26 Elcar Circle Montgomery, AL

3610P

Other Benefits and Information	47.702		
THIOTHATTON	This Period	Total-to-Date	
Medical/Dental	110.77	948.47	
Basic Life	1.94	11.64	
AD & D	0.28	1.68	
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* Taxable Benefit

Direct Dep	osit Summary	
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Deduction Arrears

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9-3 Filed 08/21/2006 P Earnings Statement Document 9-3 Page 6 of 6

AmeriCold Logistics, LLC 10 Glenlake Parkway Suite 800, South Tower Atlanta, GA 30328

Taxable Marital Status: M

Social Security Number: 421-80-3290

Exemptions/Allowances Add'1

Fed: 00 AL: 00

Overtime at 15-5900

Regular Hour 11,0600 Holiday 0.0000

Tax Deductions Fed Withholding

Vacation Gross Pay:

0.0000

Period Ending: Check Date: Check Number: Batch Number:

Page 001 of 001 08/08/2004 08/13/2004 0000862541 000000000135

FRANK BLAIR 26 Elcar Circle

Montgomery, AL 36108

Other Benefits and Information This Period	Total≃to
Medical/Dental 2.77-	945.70
	13:58
AD & D 0.28	1.96
401(k) 8 04	126.05
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79.15 1103.89

0.00

2024:77

13555.99

525.76

1142.56

Fed MED/EE 15.24 227.63 65.15 Fed OASDI/EE 973.29

0.00

:90.83

30,44 529:51 AL Withholding Total Taxes: wa

Additional Deductions	લુક્તિકાર્ટન અને સાંક્રિકો કરો છે. આ કરો તો કરો તે મહોદ્રા તે કે કરો કો કો કો કો
*Medical/Dental	20.75 1550.80
*401(k) ************************************	32,15 504,20
Supplemental Life EE	8.30 106.28
Supplemental Life - Child	0.76
Supplemental AD&D = EE	1 11 11:10
Spouse Voluntary life	(5.54) 16.62
401(k) Loan	49.82 846.94
Other Deductions	113.75 1966.70
Total Deductions: ; +:	221:10 5014.80
*Excluded from laxable Wages	নি বিভিন্ন কৰিব কৰা কৰিব কৰা কৰা কৰিব কৰিব কৰিব কৰা কৰিব কৰা কৰিব কৰিব কৰিব কৰিব কৰিব কৰিব কৰিব কৰিব
Net Pay:	660.52 9399.96
Contract of the Contract of th	

* Taxable Benefit

Direct Deposit Summary	فأند من الأجوار أن أن
Trans Type Account	Amount
Net Check	660.52

Federal Taxable Wages are Message